

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 595 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

BHALABHAI BUDHABHAI SOLANKI

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Appearance:

MR KP RAWAL, ADDL. PUBLIC PROSECUTOR for appellant

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/04/99

ORAL JUDGEMENT (Per Patel, J.)

State has preferred this appeal against the order of acquittal recorded on 27.2.1998 by learned Additional Sessions Judge, Nadiad in Sessions Case No. 126 of 1994 wherein the accused were tried for offences punishable under sections 147, 148, 149, 323, 324, 307, 326, 504 and 506 of the Indian Penal Code.

2. The prosecution case as it appears from the records before us is that on 14.10.1993 at about 9.30 a.m., an incident took place at village Palej in connection with an earlier incident which took place on a previous day. The prosecution has not examined any independent witnesses with regard to the earlier incident. The trial Court has observed that it is not possible to believe the story put forward by the prosecution. It also appears that even the previous incident was in connection with another incident which is stated to have taken place before about four years. Such stories can hardly be believed unless it is proved by cogent and convincing evidence - which is lacking in the present case.

3. With regard to another important aspect, viz. recording of the complaint, the trial Court considered the evidence in detail and held that the complaint, though was given in the evening at about 4.00 pm. which comes out from the evidence of the witness, the time written in the complaint is 9.30 am. and this is done with a view to make out the case that the prosecution launched the FIR first in time. There was overwriting so far as lodging time of the FIR is concerned.

4. The trial Court has held that the accused were also injured. Two accused were injured and injuries sustained by the accused have not been explained by the prosecution at all. No doubt, the prosecution witnesses were also injured, but the trial Court was not in a position to arrive at a conclusion as to whether the prosecution witnesses were the aggressors or the accused were the aggressors - and in our opinion, rightly so. When the witnesses are suppressing the material fact, it becomes difficult for the court to come to a definite conclusion inspite of serious efforts to separate the chaff and grain. In the instant case, there is considerable improvement in the story and if the entire incident as narrated by each witness is compiled together, as observed by the trial Court, the story not only appears to be inconsistent but also the manner in which the incident took place is doubtful. After considering various aspects, the trial Court observed that the complaint was lodged late only with a view to concoct a story and thereafter to put it up in the form of an FIR. About the investigation also, the trial Court has observed that it is difficult to believe that the investigation is independent. Even about the nature of the injuries, the trial Court has held that it is not possible to believe that the same must have been caused

by the weapons attributed to the accused.

5. This being an appeal against an order of acquittal, considering the limitations of this Court, after having gone through the records and after having heard learned Additional Public Prosecutor in detail, we are of the view that the judgment and order passed by the learned Additional Sessions Judge require no interference, and this appeal is required to be dismissed. Hence dismissed.

csm./ -----